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BELLSOUTH

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December 17, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service: CC Dkt No. 96-45

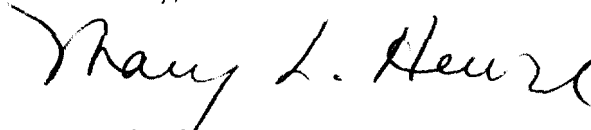
Dear Ms. Salas,

On December 16, 1997, Robert Blau and Mary Henze of BellSouth, Marvin Bailey of Ameritech and Ken Rust of Bell Atlantic met with Paul Gallant, Legal Advisor to Commissioner Gloria Tristani.

The discussion focused on two issues related to the Universal Service schools/libraries program: 1) whether or not states or other public or private entities would be eligible to receive discounts on the cost of constructing networks to be owned by those entities; and 2) whether state networks can be reimbursed directly from the Universal Service Fund. All materials provided during the meeting are attached.

This notice is being filed today pursuant to Section 1.1206(b)(2) of the Commission's rules. If you have questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Mary L. Henze
Director - Executive and
Federal Regulatory Affairs

cc: P. Gallant

081

Bell Atlantic
1300 I Street NW, Suite 400W
Washington, DC 20005

Kenneth Rust
Director, Federal Regulatory Affairs

December 15, 1997



Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Ex Parte

Re. CC Docket No. 96-45, Universal Service

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DEC 15 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I am writing to express Bell Atlantic's concern regarding pending reconsideration requests seeking universal service fund reimbursement for private municipal or state networks that serve schools and libraries.¹ These requests are inconsistent with the clear language of the 1996 Act and with public policy and should be rejected.

Under the reconsideration proposals, state or municipal governments would receive universal service fund support when they construct their own state-wide or municipal-wide telecommunications networks to serve government agencies, schools and libraries. Without competitive bidding or a true "pre-discount" rate established in the regular course of serving the public, they would obtain reimbursement from the universal service fund for the amount that they claim the schools and libraries "pay" to use a portion of this network. At the same time, because they are not carriers or other telecommunications providers, the states claim that they would have no obligation to contribute revenues from their networks into the fund from which they seek substantial reimbursement.

For example, according to the NASTD, the state telecommunications networks would be constructed from "a myriad of telecommunications services and hardware components" which the state would "bundle ... into multifaceted packages available to their eligible agency participants."² In other words, they would likely procure dark fiber facilities, switches, and other hardware and software to build a network to bypass the networks of telecommunications carriers, both incumbents and new entrants. The facilities of this network would be provided, on a monopoly basis, only to state and municipal agencies, schools, libraries, and some colleges.

¹ Reconsideration requests in this issue were filed by several parties, including the Iowa Telecommunications and Technology Commission and the National Association of State Telecommunications Directors ("NASTD"). Bell Atlantic has previously opposed these petitions in a formal opposition filed by the United States Telephone Association ("USTA") and in an October 7, 1997 ex parte meeting, memorialized in a letter filed the following day.

² NASTD ex parte at 1, filed Sept. 26, 1997 ("NASTD ex parte").

Providing universal service fund assistance to these private networks would violate the Telecommunications Act. Section 254(h)(1)(B) limits universal service fund support to telecommunications carriers.³ Although the Commission has found that non-carriers may receive some support from the schools and libraries fund, that support is limited to non-telecommunications advanced services, such as internal connections and Internet access, under Section 254(h)(2) of the Act.⁴ By contrast, the Commission appropriately determined that only telecommunications carriers may be reimbursed for providing schools and libraries with basic telecommunications services, as required under Section 254(e).⁵

State and municipal governments operating private networks cannot qualify as telecommunications carriers, as NASTD readily admits.⁶ Under §153(44), telecommunications carriers are defined as entities offering telecommunications services, which in turn are defined in § 153(46) as the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public. The services offered over these private networks, however, are not available to the public; they are provided only to designated institutions -- state and municipal agencies, schools, libraries and some colleges. Therefore, the services offered over these networks fail to fit within the statutory definition of telecommunications services, and the state and municipal governments operating these networks fail to fit within the definition of telecommunications carriers. The proposal must be rejected as inconsistent with the requirement that only such carriers may receive reimbursement from the universal service fund for providing telecommunications services to schools and libraries

The Commission should also deny the requests as a matter of sound public policy. Its education support program is firmly grounded on competition -- both to ensure the greatest value from universal service funding and to ensure that the fund is no larger than is necessary to accomplish its goals. For this reason, schools must seek competitive bids for their services. A carrier must bid a rate that is no higher than the "lowest corresponding price" at which the carrier has provided a comparable service to non-residential customers who are similarly situated to the school or library.⁷ The petitioners' request would eliminate these controls. The state or municipality would be a monopoly provider of services to the eligible institutions, thus eliminating competitive bidding. There would effectively be no lowest corresponding price, because the state or municipality would not provide service over its network on a arms-length

³ USTA at 6.

⁴ *Federal Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 97-157, ¶¶ 589-92 (rel. May 8, 1997). *See also* 47 C.F.R. § 54.517(b) (non-telecommunications carriers are eligible for support only for Internet access and internal connections).

⁵ *Id.*

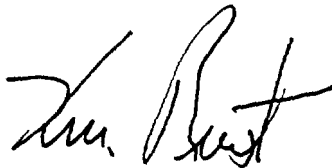
⁶ NASTD *ex parte* at 2.

⁷ *See* 47 C.F.R. §§ 54.500(a)(5), 54.511(b).

basis to the public. It could set any price it wants for services provided to the favored institutions and claim that this is the lowest corresponding price, with no marketplace control and no ability to audit. The "payments" would simply be budget entries going from one state or municipal agency or institution to another. States would have an incentive to "charge" its agencies high rates to justify assessing similarly high rates on the schools and libraries, in order to increase universal service fund reimbursements. Those reimbursements could, therefore, cover more than the cost of serving the schools and libraries and help defray large portions of the cost of the entire network. As a result, the states could use universal service funds indirectly to support services provided to non-education state agencies. No provision in either the Act or the Commission's Rules authorizes such a result.

Without competitive controls on prices, the amounts claimed for reimbursement are likely to be far higher than they would be under the competitive bidding proposal that the Commission adopted in its May 8, 1997 Report and Order. Reimbursement amounts could be so substantial that the existing fund cap could quickly be reached, leaving many schools and libraries obtaining service from telecommunications carriers without adequate support. At the same time, the state or municipalities operating such networks, because they are not carriers or "other telecommunications providers," would not contribute a penny to support universal service.

Bell Atlantic urges the Commission to deny the reconsideration requests and maintain existing provisions limiting support for telecommunications services provided to schools and libraries to telecommunications carriers, as Congress decreed.

A handwritten signature in black ink, appearing to read "Tom Power", with a stylized, flowing script.

cc: Thomas Power
Kyle Dixon
Jim Casserly
Kevin Martin
Paul Gallant
A.R. Metzger
K. Moran
T. Peterson

Potential Use of the Universal Service Fund for Construction of School Infrastructure for Wide-Area Networks

The following is a sampling of reported instances in the Ameritech serving area where school systems are considering the buildout of privately-owned and operated wide area networks. With limited market intelligence it is believed that the planning for such infrastructure is much more widespread than reported here.

At issue is the use of the universal service fund to subsidize the construction of such networks. The plan is not clear as to whether funds can be used for this purpose, or if so, whether such funding support can be exclusively claimed in the year of the buildout or whether it must be amortized over some useful life with fund support also distributed over that time period. Typically, such networks can range in price for construction costs from \$10M for a small rural network to \$75-100M for large urban systems.

A second issue is the ongoing maintenance and support for such networks. Schools may either outsource those responsibilities or hire staff to perform these functions. Will the fund be used to pay for such staffing expenditures? Certainly, in the case where the network is leased from a telecommunications carrier, maintenance is included in the price of the service. Schools may thus have a reasonable argument that such staff expenditures should be included for equitable treatment.

Urban district in Ohio

One of Ohio's largest school systems, with over 100 K-12 buildings, have hired a data consultant who has proposed that a fiber network be built that the school system would own and maintain. He determined that bandwidth/infrastructure was the most important issue and if the district could buy the network at a reduced price, they would have a network that would last for the foreseeable future. They are counting on the universal service fund to pay for the network when it is built (one payment, they hope) and they will not have a five, seven or ten year annuity to Ameritech or others.

The district's Superintendent and Technology Director have confirmed for us that they learned at a recent AASA conference in Atlanta that "there is not a single urban school system in the United States that isn't looking at building and owning such a network."

Milwaukee

Milwaukee Public Schools has initiated an RFI due this month requesting options for Dark Fiber OR SONET/DS-3 to 162 schools in the district.

The cable company is expected to submit a dark fiber alternative.

Urban district in Michigan

A large urban school system in Michigan has not yet indicated an intention to build their own private network, however a minority vendor has submitted to them an unsolicited proposal to do this. It is not totally clear whether or not the network would be owned by the school system or the contractor. What is clear is that the vendor is suggesting that if the district buys into the idea they would be eligible for re-imbursement from the fund. They have also indicated a partnering effort with IBM in presenting this proposal to various school representatives and Board members.

Iron Mountain, MI:

The Merit website discloses information on the Iron Mountain school district. They are currently bidding out electronics for hooking up fiber optic cable between school buildings. These electronics will be installed after 1-1-97....."

The Merit website offers Q&A to schools, libraries on the universal service order's plan. They offer the opinion that dark fiber is an acceptable service eligible for reimbursement from the plan.

Port Huron, MI:

The local Times-Herald reports that a fiber optic network is being built by the St. Clair County Intermediate School District for the five public school districts, the local community college, and the county library branches. The Intermediate School District has signed a contract to lease excess capacity on the network to BRE Communications, a new CLEC serving the area.

Indiana, Ohio

Our sales staff has had discussions with or is aware that school systems in Hammond, Southern Hancock County, and New Albany are considering building their own WAN networks. The Dayton, Ohio area has also had discussions about such a buildout.

OCT 27 1997

Phone rates for schools out of line

Georgia's schoolchildren could be learning on a superior and cheaper online computer network, state education officials say, if it weren't for a greedy, vindictive middleman tacking on exorbitant charges.

That middleman, of all things, is a state agency created to save money. But in some instances, it was taking taxpayers to the cleaners.

"That's changing; you can't hold us responsible for the sins of the father," said Dotty Roach, commissioner of the Department of Administrative Services, which

buys everything for government from paper clips to high-speed phone lines for the Internet.

But past transgressions have gotten the attention of Gov. Zell Miller, who wants a network in place so an eighth-grader from South Georgia can look up information at the

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University of Georgia's library.

The governor's office is looking at whether students would get more if Roach's agency didn't have a monopoly on telecommunications services.

State education officials say telephone rates being passed on to school districts are completely out of whack.

Roach's agency — which survives on what it charges its customers — acknowledges that it has charged as much as double the cost of super-fast phone lines that make the state's educational Internet program run. The

excessive charges came to light only after a bill for July was sent by mistake to the Board of Regents, which created and manages the network.

The mark-up averaged almost 60 percent but it ran as high as 116 percent on one line from Savannah to Augusta. "They were getting ripped off," Roach said.

Taxpayers may find the reason for the charges even more outrageous: a longstanding turf war between administrative services and the regents. Administrative services used the higher rates to get back at them, Roach said.

Since taking office last year, Roach has fired five of seven telecommunications managers, several of whom refused to disclose to her how they figured bills to their customers.

In addition, she has refigured the phone line charges and reimbursed the regents for any mark-up exceeding 10 percent. On the July bill for 20 lines, the savings will amount to \$116,641 this year.

The theory behind the process is simple: One agency representing the purchasing power of the entire state should get lower prices.

But some state officials wonder if that is still the case in the cut-throat, cut-rate business of telecommunications. A few years ago, Georgia Public Broadcasting took bids on its own for a new phone system and drove down the price by \$140,000.

This year, taxpayers will spend \$10 million to get public schools, libraries and technical institutions hooked up to PeachNet, the state's education network, and GALILEO, a database that includes thousands of periodicals, scholarly journals and an encyclopedia.

But education officials say they can't create the network they want because of excessive costs they must pay Roach's agency. They want to bid out the project, but were told they couldn't.

"We just want the best rates to pass the savings on to the school systems," said Oscar Perry of the state's Education Department. "It is my opinion a competitive bid will achieve that."

Roach disagrees, but education officials have a hard time trusting her agency. And for a good reason, Roach acknowledges.

"We have been wrong," she said. "We are legitimately trying to go in there and do the right thing."